

# **EXHIBIT 6**

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VirtaMove Corp. v. Amazon.com, Inc., et al.

Paul O'Leary

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UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
MIDLAND/ODESSA DIVISION

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VIRTAMOVE, CORP., )  
Plaintiff, )  
Case No. )  
v ) 7:24-CV-00030-DC-DTG  
AMAZON.COM, INC.; AMAZON.COM )  
SERVICES LLC; AND AMAZON WEB )  
SERVICES, INC., )  
Defendants.)  
)

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VIDEOTAPED DEPOSITION OF PAUL O'LEARY  
APPEARING REMOTELY  
October 7, 2024  
5:28 p.m.

Reported by: Eileen Mulvenna, CSR/RMR/CRR/RDR

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DIGITAL EVIDENCE GROUP  
1730 M Street, NW, Suite 812  
Washington, D.C. 20036  
(202) 232-0646

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1 REMOTE VIDEOTAPED DEPOSITION of  
2 PAUL O'LEARY, a witness on behalf of Plaintiff in  
3 the above-titled action, held on Tuesday, October 7,  
4 2024, commencing at approximately 5:28 p.m., before  
5 Eileen Mulvenna, CSR/RMR/CRR/RDR, Certified  
6 Shorthand Reporter, Registered Merit Reporter,  
7 Certified Realtime Reporter, Registered Diplomat  
8 Reporter, and Notary Public of the State of New  
9 York.

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1 A P P E A R A N C E S:

2

3 QI (PETER) TONG, ESQUIRE

4 Attorneys for the Plaintiff and the Witness

5 RUSS AUGUST & KABAT

6 4925 Greenville Avenue, Suite 200

7 Dallas, Texas 75206

8 ptong@raklaw.com

9

10

11 JEREMY ANAPOL, ESQUIRE

12 Attorneys for Defendants

13 Knobbe Martens Bear & Owens

14 2040 Main Street, 14th Floor

15 Irvine, California 92614

16 jeremy.anapol@knobbe.com

17

18

19 ALSO PRESENT:

20 Bill Fahnert, Videographer

21

22

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1 I N D E X

2 WITNESS EXAMINATION BY PAGE

3

4 PAUL O'LEARY

5 MR. MR. ANAPOL 6

6

7 E X H I B I T S

8 PAGE

9

10 Exhibit 1013 Bates Nos. 19

11 VM\_AMAZON\_0001431 through

12 VM\_AMAZON\_0001437,

13 Declaration of Paul O'Leary

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1 THE VIDEOGRAPHER: We are on the  
2 record.

3 This is the remote video deposition of  
4 Paul O'Leary in the matter of Verta  
5 Corporation versus Amazon.Com, Incorporated,  
6 et al., filed in the United States District  
7 Court for the Western District of Texas,  
8 Midland/Odessa Division.

9 My name is Billy Fahnert. I am the  
10 video technician today. The court reporter  
11 is Eileen Mulvenna. We both represent  
12 Digital Evidence Group.

13 Today's date is October 7, 2024. The  
14 time is 5:28 p.m., Eastern Daylight Time.

15 All parties have stipulated to the  
16 witness being sworn in remotely.

17 Will counsel please identify  
18 yourselves for the record and then the  
19 witness will be sworn in.

20 MR. ANAPOL: Jeremy Anapol, Knobbe  
21 Martens on behalf of defendants.

22 MR. TONG: Peter Tong from Russ August

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1 Kabat on behalf of VirtaMove Corporation and  
2 also representing the witness.

3 PAUL O'LEARY,

4 having been duly sworn by Eileen Mulvenna,  
5 a Notary Public of the State of New York,  
6 was examined and testified as follows:

7 EXAMINATION

8 BY MR. ANAPOL:

9 Q. Good evening, Mr. O'Leary.

10 A. Good evening.

11 Q. You understand that you're under oath  
12 just as if you were in a courtroom and so you're  
13 obligated by law to tell the truth in all of your  
14 answers; correct?

15 A. Yes, I do.

16 Q. Please state your full name for the  
17 record.

18 A. My full name is Paul Robert O'Leary.

19 Q. And you are not a VirtaMove employee;  
20 correct?

21 A. That is correct, I'm not a VirtaMove  
22 employee.

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1 A. No --

2 MR. TONG: Hold on.

3 Objection. I'm going to object into  
4 privilege for what we put into the  
5 declaration.

6 BY MR. ANAPOL:

7 Q. What did you mean by "what was put  
8 into the declaration," Mr. O'Leary?

9 A. I meant the information in the  
10 declaration, that was in the draft that I read and  
11 that was in the final that I copied together with  
12 information that I provided.

13 Q. Who did you get that draft from?

14 A. Russ August Kabat.

15 Q. Who at Russ August?

16 A. Peter.

17 Q. So how much time have you charged to  
18 Russ August so far in this case?

19 A. Probably on the record of 40 hours.

20 Q. Do you recall testifying in your  
21 declaration that you expect to be at trial for more  
22 than a week in this case?



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1 MR. TONG: Objection, foundation.

2 BY MR. ANAPOL:

3 Q. Go ahead, Mr. O'Leary.

4 A. Yes, I put that -- whatever time would  
5 be required.

6 Q. Have you ever been to Northern  
7 California?

8 A. Yes, I have.

9 Q. How many times?

10 A. Quite a few times early in my career.

11 Q. Do you have an estimate of how many  
12 times?

13 A. Probably somewhere between 10 and 15  
14 times.

15 Q. And did you go for business or  
16 personal reasons?

17 A. Always business.

18 Q. And what company was that with?

19 A. Originally it was Nortel Networks and  
20 also with my previous employer, Innovapost.

21 Q. Did you go at all when you worked for  
22 Trigence?

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1           A.       We did not go to California when I  
2       worked for Trigence.

3           Q.       So why were you willing to go to  
4       Northern California 10 to 15 times before but you're  
5       not willing to go now?

6           A.       Because that's where the Northern  
7       Telcom offices were.

8           Q.       Okay, but why would you not go now?

9           A.       Because of the venue. And I've also  
10      been to -- for the same reasons I've been in  
11      Northern Telcom offices in Dallas and that is a  
12      lot -- that is a lot less -- that's a lot less  
13      inconvenient for me to get there due to the  
14      distance.

15          Q.       Have you ever been to Midland, Texas?

16          A.       I've not been to Midland. I've been  
17      to Dallas.

18          Q.       Do you know how far Midland is from  
19      Dallas?

20          A.       Maybe a hundred miles or something. I  
21      don't know. I'd have to look it up.

22          Q.       So you have no personal experience

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1 with the inconvenience of getting to Midland, Texas;  
2 correct?

3 MR. TONG: Objection, form.

4 BY MR. ANAPOL:

5 Q. Go ahead, Mr. O'Leary.

6 A. So I have not -- I have no -- I've not  
7 been to Midland, Texas; however, I've been to Dallas  
8 many times.

9 Q. And you've also been to Northern  
10 California many times?

11 A. Yes.

12 Q. So you have no personal experience  
13 with the convenience of traveling to Midland, Texas;  
14 correct?

15 MR. TONG: Objection, asked and  
16 answered, form.

17 BY MR. ANAPOL:

18 Q. Go ahead, Mr. O'Leary.

19 A. So I answered previously that I have  
20 been to Dallas many times. So I'm aware of getting  
21 to Dallas. Midland is not that far from Dallas.

22 Q. It's not? How far is Midland from

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1 Dallas?

2 A. Maybe a hundred miles or so.

3 Q. Are you sure about that?

4 A. I haven't looked it up and I'm not  
5 certain.

6 Q. So what's your basis for saying it's a  
7 hundred miles?

8 A. That's what I think when I looked on  
9 the map.

10 Q. Okay. Could you be off by a factor of  
11 two?

12 A. Possible, yes. I don't know.

13 Q. Could you be off by a factor of three?

14 A. Possible, yes. I don't know.

15 Q. So you really have no idea how far  
16 Midland is from Dallas; correct?

17 MR. TONG: Objection; argumentative.

18 BY MR. ANAPOL:

19 Q. Correct?

20 A. I've indicated what I believe from  
21 what I know. I can look it up.

22 Q. Could you be off by more than a factor

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1 of three?

2 A. I don't know.

3 Q. So you really just don't know how far  
4 Midland is from Dallas; correct?

5 A. I assume it's about a hundred miles or  
6 so. I'd have to look it up. I've seen it on the  
7 map, but I'd have to look it up in terms of travel.

8 Q. Do you know how many hours it takes to  
9 drive from Dallas to Midland?

10 A. No, I do not.

11 Q. Do you think that there are direct  
12 flights from your location in Canada to Midland,  
13 Texas?

14 A. I would be surprised if there were.

15 Q. So how would you actually get to  
16 Midland if you had to go?

17 MR. TONG: Objection, form.

18 BY MR. ANAPOL:

19 Q. So, Mr. O'Leary, just to be clear,  
20 your counsel is going to make certain objections for  
21 the record. Unless he instructs you not to answer,  
22 you still have to answer the question.

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1           A.       So I would fly to Dallas and either  
2       drive or fly to Midland.

3           Q.       And you're not sure how many miles or  
4       hours you would drive or fly once you got to Dallas;  
5       correct?

6           A.       Once I got to Dallas, no.   I haven't  
7       looked that up.

8           Q.       Why didn't you put that in your  
9       declaration?

10          A.       Because --

11                   MR. TONG:   Hold on.

12                   Objection, calls for a legal  
13       conclusion.

14   BY MR. ANAPOL:

15          Q.       Go ahead.

16          A.       Why -- could you repeat the question?

17          Q.       Why didn't you put in your declaration  
18       how long you expect to take to travel from Dallas to  
19       Midland?

20          A.       Because the declaration only covered  
21       the direct distance, not flying times, as a measure  
22       of one being more inconvenient than the other.

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1 you're unwilling to go to Northern California for  
2 this case?

3 A. So Midland, Texas is far more easier  
4 for me to get to. It's less inconvenient. It will  
5 take less time to get there.

6 Q. My question --

7 A. California for me -- I'm on the  
8 eastern side of the country, almost on the East  
9 Coast. California for me means going across the  
10 whole continent and it takes an awful lot more time,  
11 as you said, when you factor in the flights and the  
12 connectings and all of that. So Midland, Texas is  
13 far more -- is far, if you will, less inconvenient  
14 for me --

15 Q. Well --

16 A. -- due to the differences in the  
17 distances.

18 Q. But you testified earlier that you  
19 don't know how long it would take to get from Dallas  
20 to Midland; correct?

21 A. Sure, but --

22 MR. TONG: Objection,

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1 mischaracterizes.

2 BY MR. ANAPOL:

3 Q. But what, Mr. O'Leary?

4 A. I said sure, but it's pretty close.

5 It's not going to take long.

6 Q. It's five hours away, Mr. O'Leary.

7 Did you know that?

8 MR. TONG: Objection, foundation.

9 (Cross talk.)

10 BY MR. ANAPOL:

11 Q. Did you know that driving from Midland  
12 to Dallas takes five hours?

13 MR. TONG: Objection, foundation.

14 BY MR. ANAPOL:

15 Q. Did you know that, yes or no?

16 A. No, I did not know that.

17 Q. When you wrote this declaration,  
18 nobody told you that Midland is five hours from  
19 Dallas; correct?

20 A. No, I wasn't -- it's not in the  
21 declaration.

22 Q. When did you decide that you were



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1 unwilling to travel to Northern California for this  
2 case?

3 A. At the point -- at the point where I  
4 signed the declaration.

5 Q. So before you received the draft  
6 declaration from Russ August, you had not yet  
7 decided that you were unwilling to travel to  
8 Northern California?

9 A. No, I had not signed anything at that  
10 point. That's all I'm saying.

11 Q. So was there a point before when you  
12 signed the declaration that you decided you were  
13 unwilling to go to Northern California?

14 MR. TONG: Objection, form.

15 THE WITNESS: So the declaration says  
16 that I am -- I find that it would be less  
17 inconvenient, less costly and quicker for me  
18 to get to Midland, Texas. That's all it  
19 says.

20 BY MR. ANAPOL:

21 Q. So would you be willing to go to  
22 Northern California if Russ August asked you to go?

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1 MR. TONG: Objection, form.

2 THE WITNESS: The form that's been  
3 submitted, I believe, testifies to the  
4 position on it that I signed for; right?

5 BY MR. ANAPOL:

6 Q. That did not answer my question. My  
7 question is, if Russ August asked you to go to  
8 Northern California, would you go?

9 A. That's a hypothetical --

10 MR. TONG: Object to form.

11 THE WITNESS: -- situation.

12 Sorry.

13 BY MR. ANAPOL:

14 Q. So are you willing to promise right  
15 now that you would not go to Northern California if  
16 Russ August asked you to go?

17 MR. TONG: Objection, form.

18 THE WITNESS: I'm saying I don't want  
19 to speculate on questions I haven't been  
20 asked yet, or situations. I'm saying what  
21 we're here to talk about is the declaration  
22 in front of us and which I've indicated by

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1 signature that Midland, Texas is far more  
2 convenient -- or far less inconvenient for me  
3 than going to Northern California. That's  
4 all I believe we're talking about today.

5 BY MR. ANAPOL:

6 Q. I'm asking you, are you willing to go  
7 to Northern California if the trial for this case is  
8 in Northern California and Russ August asks you to  
9 go?

10 MR. TONG: Objection, form, asked and  
11 answered.

12 THE WITNESS: I'll come back to my  
13 previous answer. That's not what I believe  
14 we're here -- we're here to go through the --

15 BY MR. ANAPOL:

16 Q. Mr. O'Leary, I don't --

17 A. -- declaration.

18 Q. I don't need your --

19 MR. TONG: Jeremy --

20 Q. -- legal understanding -- I don't need  
21 your legal understanding of what we're here to  
22 discuss. If Mr. Tong believes I'm going outside the

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1 scope of what we're permitted to discuss, he can  
2 call Judge Gilliam who will stop me; but I'm  
3 entitled to cross-examine you on your declaration  
4 which means to probe how seriously the court should  
5 take what you're saying here. Okay? So listen  
6 carefully to my question and I would like an answer  
7 to this question.

8 If the trial for this case is in  
9 Northern California and Russ August asks you to go  
10 to trial, would you go?

11 MR. TONG: Objection to form, asked  
12 and answered. And also, the witness was cut  
13 off by Mr. Anapol interrupting the answer.

14 BY MR. ANAPOL:

15 Q. Go ahead, Mr. O'Leary.

16 A. I would have to take it under  
17 consideration, and I can't answer that question for  
18 you right now because the question hasn't been  
19 asked.

20 Q. So you would consider going to  
21 Northern California, but you're not willing --

22 A. No --

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1 Q. -- to commit right now?

2 A. -- I would say -- I said I would have  
3 to consider -- I would say I would have to take the  
4 question being asked under consideration. I making  
5 no statement right now about how I potentially would  
6 or wouldn't answer that question.

7 Q. So you're not willing to take a  
8 position right now on whether you would or would not  
9 be willing to go to Northern California if Russ  
10 August asks you to do it for this case?

11 A. Yes. I would have to -- I would make  
12 that decision at the time should those circumstances  
13 happen, but I'm not willing to make a decision right  
14 now.

15 Q. And is there anything Russ August  
16 would have to do to convince you to go to Northern  
17 California?

18 MR. TONG: Objection, form.

19 THE WITNESS: I believe -- I think I  
20 already answered that I wouldn't -- I would  
21 have to consider the question at the time it  
22 was asked if it was asked. But right now, I

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1           can't tell you how I would answer the  
2           question. I would have to give it  
3           consideration at the time.

4   BY MR. ANAPOL:

5           Q.       And -- but you're willing to say right  
6           now that you would go to Midland?

7           A.       Yes, I'm willing to say that right  
8           now. That's what it says in the -- that is more --  
9           that is less inconvenient for me.

10          Q.       Because of what?

11          A.       Because of the distance that I have to  
12          travel.

13          Q.       But we established earlier that you  
14          cannot fly directly from your home in Canada to  
15          Midland; correct?

16          A.       Yes. You established that correctly,  
17          yes. However --

18          Q.       You don't know how long it would take  
19          to actually get to Midland from your home; correct?

20                 MR. TONG: Objection,  
21                 mischaracterizes. And also, the question  
22                 interrupted the answer.

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1 BY MR. ANAPOL:

2 Q. Go ahead, Mr. O'Leary.

3 A. What I do know is going across the  
4 continent to California takes a day for me to get  
5 there and a day for me to get back. I do know many  
6 occasions I've gone to Dallas, worked through the  
7 week, come back on a Friday night and gone back on a  
8 Sunday night so that I can spend the weekend at  
9 home. Right now family situations are also a  
10 consideration in terms of the travel.

11 Q. Okay. So are you able to say that  
12 getting from your home to Midland would take less  
13 than a day?

14 A. From my home to Midland, yes.

15 Q. How do you know that?

16 A. Because whether I drive or whether I  
17 fly from Midland into Dallas, I can arrange to get  
18 there and get an evening flight out of Dallas and  
19 get back here and then go back on a Sunday if it's a  
20 weekend situation. Flying across the continent is a  
21 whole day to get there and a whole day to get back.  
22 It is not that case if I have to go to Texas.

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1 Q. How do you know it doesn't take a  
2 whole day to get to Midland?

3 A. I've been to Dallas. So if I take --

4 Q. But -- I'm sorry, go ahead.

5 A. I've been to Dallas many times.

6 Q. I get that Dallas is convenient. This  
7 case was not filed in Dallas. My question is about  
8 Midland. How do you know that you could quickly get  
9 to Midland?

10 A. How do I know that I can quickly get  
11 to Midland? I'm going by the distance; right?

12 Q. But the only way that you can get from  
13 Midland to Dallas that we've discussed is by car;  
14 correct?

15 MR. TONG: Objection --

16 (Cross talk.)

17 THE WITNESS: I don't know.

18 MR. TONG: -- lacks foundation.

19 THE WITNESS: Before I agree with  
20 that, I'd have to go look it up.

21 BY MR. ANAPOL:

22 Q. So you don't know how you would



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1 actually get from --

2 MR. TONG: Hold on. Before you ask  
3 your question, you're speaking really fast.  
4 The court reporter I don't think is quite  
5 keeping up. That was objection, form,  
6 mischaracterizes, lacks foundation to your  
7 previous question.

8 BY MR. ANAPOL:

9 Q. Mr. O'Leary, does your agreement with  
10 VirtaMove require them to -- I'm sorry, strike that.  
11 Let me rephrase.

12 Has Russ August agreed to reimburse  
13 you for your travel expenses in this case?

14 A. I believe so.

15 Q. And how would you get from Midland to  
16 Dallas conveniently?

17 A. How would I get? I'd look at what's  
18 available for transportation and choose whatever  
19 worked best.

20 Q. Have you done that analysis yet?

21 A. No, I've not done that analysis yet.

22 Q. What is it that you plan to testify

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1 STATE OF NEW YORK )

2 ss:

3 COUNTY OF WESTCHESTER )

4 I, EILEEN MULVENNA, CSR/RMR/CRR, a  
5 Certified Court Reporter, Registered Merit Reporter,  
6 Certified Realtime Reporter, and Notary Public in  
7 and for the State of New York, do hereby certify:

8 That I reported the taking of the  
9 deposition of the witness, PAUL O'LEARY,  
commencing on the 7th day of October, 2024, at the  
10 hour of 5:28 p.m.

That prior to being examined, the witness  
11 was duly sworn by me to testify to the truth, the  
whole truth, and nothing but the truth.

12 That I thereafter transcribed my said  
shorthand notes into typewriting and that the  
13 typewritten transcript of said deposition is a  
complete, true and accurate transcription of my  
14 said shorthand notes taken down at said time, and  
that a request has been made to review the  
15 transcript.

I further certify that I am not a relative  
16 or employee of an attorney or counsel of any of the  
parties, nor a relative or employee of any attorney  
17 or counsel involved in said action, nor a person  
financially interested in the action.

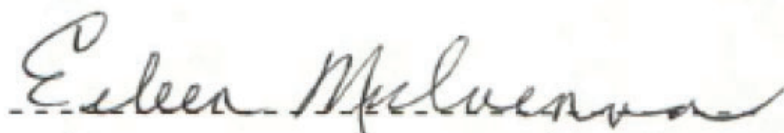
18 IN WITNESS WHEREOF, I have hereunto  
set my signature this 9th day of October, 2024.

19

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21

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EILEEN MULVENNA, CSR/RMR/CRR/RDR